

An Roinn Oideachais agus Eolaíochta
Rannóg Múinteoirí Iarbhunoideachais
Cor na Madadh,
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Cornamaddy,
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Fax: 090 – 6478024

Circular 0034/2009

To: The Management Authorities of Voluntary Secondary, Community and Comprehensive Schools, and the Chief Executive Officers of Vocational Education Committees

**Protection of Employees (Fixed-Term Work) Act 2003 –
Amendment of Circular Letter 0055/2008**

Circular 0055/2008 advises school authorities of the terms agreed for the implementation of the Protection of Employees (Fixed Term Work) Act 2003 insofar as it applies to a person employed as a qualified teacher in an approved teaching post wholly funded out of moneys provided by the Oireachtas with a contract of employment with the Vocational Education Committee/ or post primary school.

Section 1.5 of that circular states that the terms of the circular will be open to review in light of experience and precedent developments elsewhere.

The purpose of this circular is to set out two changes to circular 0055/2008 necessary to bring it in line with case law. This circular supersedes circular 0055/2008.

The following changes are effective immediately:

1. 4.2.1 (iii) is hereby replaced with

(iii) s/he has had in excess of 4 years continuous teaching service, under two or more successive written contracts of employment with the same employer that were paid for out of monies provided by the Oireachtas,

2. 4.2.1 (iv) is hereby deleted and the subsequent sub-sections renumbered.

Paragraph 4.2.1 of circular 0055/2008 now reads:

“The employer shall issue a contract of indefinite duration to any member of the teaching staff who satisfies all of the following conditions;

- (i) s/he is registered on a current basis with the Teaching Council and
- (ii) s/he is the holder of qualifications, including teacher education where appropriate to the sector, and

- (iii) s/he has had in excess of 4 years continuous teaching service, under two or more successive written contracts of employment with the same employer that were paid for out of monies provided by the Oireachtas,

unless s/he is excluded by reason of one or more of the following

- (iv) s/he is covering for another teacher absent on an approved scheme of leave of absence and this was set out as an objective ground in writing in the previous contract or
- (v) the post will not be viable within a reasonable period and this was set out as an objective ground in writing in the previous contract.”

The revised text of the implementation arrangements is enclosed at Appendix 1.

This circular and an Irish translation can be accessed on the Department's website www.education.ie

Queries concerning this circular letter should be emailed to: allocations@education.gov.ie

Hubert Loftus
Principal Officer

June, 2009

Appendix 1

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To: The Management Authorities of Voluntary Secondary, Community and Comprehensive Schools, and the Chief Executive Officers of Vocational Education Committees

Protection of Employees (Fixed-Term Work) Act 2003 - Implementation Agreement – Amended Text

1 PURPOSE OF THIS CIRCULAR

- 1.1 The purpose of this circular is to advise school authorities of the terms agreed for the implementation of the Protection of Employees (Fixed Term Work) Act 2003 insofar as it applies to a person employed as a qualified teacher in an approved teaching post wholly funded out of moneys provided by the Oireachtas with a contract of employment with the Vocational Education Committee/ or post primary school. This agreement was reached following discussions under the auspices of the Teachers Conciliation Council (comprising representatives of the managerial authorities of schools, the teacher unions and the Departments of Education and Science and of Finance) and with the assistance of an independent facilitator.
- 1.2 Employers are advised and reminded that where an employer is seeking Oireachtas funding for a contract in excess of its approved allocation, the express approval of the Department must be obtained and each case will be considered on its merits.
- 1.3 This circular letter contains, in consolidated form, the terms of the most recent and all previous agreements in relation to implementation of the Protection of Employees (Fixed Term Work) Act 2003 and consequently all previous circulars (PPT14/05, 0010/2006, 0046/2006, and 0124/2006) are hereby superseded.
- 1.4 Employers are also advised that cognisance should be taken of other relevant employment legislation – including the Unfair Dismissals Acts - in dealing with issues arising from this Circular Letter.
- 1.5 Interpretation of the terms of this circular, where necessary, is a matter to be decided under the auspices of the Teachers Conciliation Council. Any difficulties arising should be brought to the attention of the appropriate representative organisation for the purpose of clarification. The terms of this circular will be open to review in light of experience and precedent developments elsewhere.
- 1.6 For the purpose of this circular, the following terms shall have the meaning assigned to them here:

“Act” refers to the Protection of Employees (Fixed Term Work) Act 2003

“approved permanent posts” refers to the number of permanent teaching posts (expressed in wholtime teacher equivalents) approved

Appendix 1

	in the Department's letter of allocation of posts to individual employers
"CID"	refers to a contract of indefinite duration
"Department"	refers to the Department of Education and Science
"employer"	means a Vocational Education Committee and, in the case of voluntary secondary, community and comprehensive schools, a Board of Management/Manager
"employment"	refers to employment in a teaching post
"Minister"	refers to the Minister for Education and Science
"objective condition"	shall have the meaning assigned to it in section 8 of the Act - i.e. a) Arriving at a specific date or b) Completing a specific task or c) The occurrence of a specific event
"post"	refers to a teaching post, whether full time or part time, which is funded out of moneys provided by the Oireachtas.
"pro rata"	means that the salary entitlements of a part-time teacher are calculated in proportion to that of a full time teacher on an equivalent point of the common basic scale for teachers and with equivalent qualification allowances
"school year"	refers to the 12 months commencing on 1 st September in any calendar year and ending on 31 st August in the succeeding year in accordance with circular letter 38/00 (Post-Primary)
"teacher"	refers to a person registered as a teacher on a current basis by the Teaching Council and holding the qualifications, including teacher education where appropriate, suited to the purpose of the particular teaching post
"Teaching Council"	refers to the Teaching Council established under The Teaching Council Act 2001 as amended

2 RECRUITMENT PROCEDURES

- 2.1 A post, which it is anticipated will be vacant for a period in excess of 26 weeks, shall be advertised and filled through a formal recruitment process using the same selection procedures and criteria as for permanent appointment.
- 2.2 It shall be the responsibility of the employer (NOT the teacher) to employ a suitable replacement for any period of absence under a fixed term contract.
- 2.3 To be eligible for recruitment to a teaching post, the teacher shall be registered by the Teaching Council and shall satisfy the recruitment policy in the relevant second-level sector as approved from time to time by the Minister.

Appendix 1

- 2.4** An employer is obliged to select for appointment only those candidates whose qualifications are suited to the purpose of the post for which s/he is proposed. Every reasonable effort shall, therefore, be made by an employer to recruit a suitably qualified teacher.
- 2.5** In exceptional circumstances, where the employer can satisfactorily demonstrate to the Department of Education and Science that every reasonable effort has been made to recruit an appropriately qualified teacher, an unqualified person may be recruited pending the recruitment of an appropriately qualified teacher and this provision must be inserted in the terms of the contract issued to that applicant. The recruitment of an unqualified person shall be fully documented in the school records and these records shall be made available for inspection by the Department if requested. The employer shall repeat the process to recruit an appropriately qualified teacher within the period of such a contract. This provision will be reviewed prior to the commencement of Section 30 of the Teaching Council Act 2001.

3 FIXED TERM CONTRACT

3.1 Definition of a Fixed-term Contract

- 3.1.1** A fixed term contract is any contract of employment, whether full-time or part-time, where the end of the contract is determined by an objective condition having been met.
- 3.1.2** In accordance with section 2 of the Act, a person who is on work placement as part of their vocational training is not an employee for the purposes of the Act.

3.2 Terms of Employment

- 3.2.1** The principle to be applied to terms of employment in respect of fixed-term teachers is that of no less favourable treatment by the employer during the period of contract than exists for a comparable permanent teacher unless objective grounds exist for doing so.
- 3.2.2** In general, the expiry of a contract, and as a consequence the termination of the employment relationship, marks the end of any obligation on the part of the employer to a teacher in respect of terms of employment.
- 3.2.3** A teacher shall be required to maintain his/her registration with the Teaching Council. Should the teacher allow his/her registration to lapse, or if s/he is removed from the register, for any reason, this shall be an objective ground for termination of the contract.
- 3.2.4** Every teacher appointed shall be subject to the normal probationary procedures for employment purposes prior to confirmation in the post. These procedures are distinct from those which may be required by the Teaching Council for the purposes of teacher registration.
- 3.2.5** A teacher engaged on a fixed term contract shall receive written terms of employment (see Terms of Employment (Information) Act 1994) within two months of the date of appointment. Both the teacher and the employer shall sign this statement. A copy of the signed statement shall be given to the teacher and the employer shall retain a signed copy on file. Each statement of terms of employment shall contain the objective conditions determining the fixed term contract.

3.3 Notification of Permanent Vacancies

- 3.3.1** Fixed-term teachers must be notified of the existence of a permanent vacancy. Management authorities should note the provisions of the Protection of Employees (Fixed-Term) Work Act, 2003 which at section 10.2 provides that the information

Appendix 1

regarding a vacancy *“may be provided by means of a general announcement at a suitable place or undertaking or establishment”*.

- 3.3.2** The method used to bring such posts to the attention of fixed-term teachers, including those on leave of absence, shall be included in the written statement of terms of employment given to each fixed-term teacher. The methodology to be used is not prescriptive and may include use of, for example, any or all of the following:
- the employer's website,
 - the school staff notice board,
 - individual notification by letter post (e.g. to teachers on leave of absence).

The objective is to ensure that the fixed-term teacher is notified in a timely manner of the post to be filled so as to provide the teacher with the opportunity to apply for the post should s/he wish to do so.

3.4 Access to Training

3.4.1 Continuing Professional Development (CPD): A fixed-term teacher shall have access to CPD (incl. in-service training) on the same basis as a comparable permanent teacher. Such access shall not be confined to the days on which the fixed-term teacher would ordinarily be employed.

3.4.2 Post Graduate Training: A fixed term teacher shall be eligible to apply for access to Post Graduate courses in accordance with the procedures and criteria prescribed from time to time by the Minister. Payment of salary (where it applies) while attending at such courses shall not exceed the duration of the contract of the fixed term teacher.

3.5 Career-Breaks:

3.5.1 A fixed-term teacher shall have access to the career break scheme on the same basis as a permanent teacher within the relevant second level sector.

3.5.2 A fixed term teacher's entitlement to a career break shall cease on the expiry of the fixed-term contract and that contract not having been renewed.

3.5.3 An employer, in refusing a career break application, shall state in writing the reason for refusal and such refusal shall be based on considerations other than the status of the employee concerned as a fixed-term employee.

3.6 Job Sharing:

3.6.1 A fixed-term teacher shall have access to the job-sharing scheme on the same basis as a comparable permanent teacher within the relevant second level sector.

3.6.2 A fixed term teacher's entitlement to job-sharing shall cease on the expiry of the fixed-term contract and that contract not having been renewed.

3.6.3 An employer, in refusing a job-sharing application, shall state in writing the reason for refusal and such refusal shall be based on considerations other than the status of the employee concerned as a fixed-term employee.

3.7 Sick Leave:

3.7.1 A fixed-term teacher shall have the same entitlement to certified and uncertified sick leave as a comparable permanent teacher within the relevant second level sector.

3.7.2 The teacher's entitlement to sick leave, whether paid or unpaid, shall cease on the expiry of the fixed-term contract and that contract not having been renewed.

Appendix 1

3.8 Maternity/Adoptive Leave:

- 3.8.1** A fixed-term teacher shall have the same entitlement to maternity/adoptive leave and, while on maternity/adoptive leave which occurs during the term of their contract, shall have the same, or pro rata in the case of a part-time teacher, entitlement to pay as a comparable permanent teacher within the same sector.
- 3.8.2** The teacher's entitlement to paid maternity/adoptive leave shall cease on the expiry of the fixed-term contract and that contract not having been renewed.
- 3.8.3** Where the fixed-term contract is renewed by a succeeding contract, maternity/adoptive leave shall continue, as shall the entitlement to pay, up to the limit imposed under the maternity/adoptive leave scheme or the expiry of the succeeding contract, whichever is the sooner.

3.9 Other Leave:

- 3.9.1** A fixed-term teacher shall have the same entitlement as a comparable permanent teacher to the arrangements for the following categories of leave within the relevant post-primary sector:
- (i) Parental Leave**
 - (ii) Paternity Leave**
 - (iii) Force Majeure Leave**
 - (iv) Carers Leave**
 - (v) Compassionate Leave**
 - (vi) Personal Days (where applicable)**

3.10 Renewal of Contract

- 3.10.1** A teacher, who was recruited initially by an employer through a formal recruitment process and was suitably qualified for the original appointment, shall not be required to engage again in a formal recruitment process for reappointment by the same employer in the same or a similar teaching post on successive fixed term contracts.
- 3.10.2** A teacher shall not be offered a renewal of his/her contract where s/he has allowed his/her registration as a teacher to lapse, or where s/he has been removed from the register, for any reason and this shall be included in every contract as an objective ground for non-renewal.
- 3.10.3** An employer that proposes to renew a fixed-term contract, shall inform the fixed term teacher in writing, at the latest by the date of renewal, of the objective grounds justifying
- a) the renewal of the fixed-term contract and
 - b) the refusal to offer a contract of indefinite duration.

4 CONTRACT OF INDEFINITE DURATION (CID)

4.1 Definition of a CID

A person employed on a contract of indefinite duration means that the person has an expectation that, subject to the normal date of retirement in the employment, she or he will be retained in the employment and will not be dismissed without there being any good reason such as misconduct or unfitness for their position, or other compelling or unavoidable circumstances. Any dismissal shall be achieved by the application of the agreed termination arrangement for the particular sector or the application of the relevant statute, as the case may be.

Appendix 1

4.2 Entitlement to a CID

4.2.1 The employer shall issue a contract of indefinite duration to any member of the teaching staff who satisfies all of the following conditions;

- (i) s/he is registered on a current basis with the Teaching Council and
- (ii) s/he is the holder of qualifications, including teacher education where appropriate to the sector and
- (iii) s/he has had in excess of 4 years continuous teaching service, under two or more successive written contracts of employment with the same employer that were paid for out of monies provided by the Oireachtas,

unless s/he is excluded by reason of one or more of the following

- (iv) s/he is covering for another teacher absent on an approved scheme of leave of absence and this was set out as an objective ground in writing in the previous contract or
- (v) the post will not be viable within a reasonable period and this was set out as an objective ground in writing in the previous contract.

4.2.2 Where an employer issues a CID and that CID is to be Oireachtas funded, the employer must comply with the terms and conditions of this Circular Letter.

4.3 Hours of the Contract of Indefinite Duration

4.3.1 The hours of the CID will be those hours for which the teacher was engaged on a fixed term contract in the school year prior to the issuing of the CID (other than those hours which are for the provision of temporary cover.

4.4 Appeals Procedure

4.4.1 An informal system for adjudication of appeals, from individual teachers against refusal to award a CID or the terms under which a CID is awarded, is set out in Circular Letter 0050/2006.

4.4.2 Employers, in every notification of a decision to award or to refuse a CID, shall state the closing date and time for lodgement of an appeal.

5 MECHANISM FOR THE ALIGNMENT OF POSTS AND AVAILABLE PERSONNEL

5.1 Method of Calculation of Under/Over Quota:

5.1.1 The allocation of posts to each school/sector will continue to be determined in accordance with procedures approved from time to time by the Minister.

5.1.2 For the purposes of calculating the number of serving teachers to whom there is an ongoing contractual obligation for any academic year, it is necessary to combine the number of permanent teachers with the number of CID teachers (expressed in whole-time equivalents). Based on the agreed definition of an employee on a contract of indefinite duration, those on contracts of indefinite duration have effectively the same tenure rights as a permanent teacher. The combination of permanent and contract of indefinite duration teachers will, in some instances, result in schools having a total number of teachers below, equal to or in excess of the number of approved permanent posts for the school.

Appendix 1

5.1.3 Where the combined number of permanent/CID teachers is equal to or in excess of the number of approved permanent posts (expressed in whole-time equivalents), no recruitment to permanent posts shall be undertaken.

5.1.4 Where the combined number of permanent/CID teachers is less than the number of approved permanent posts (expressed in whole-time equivalents), the filling of a permanent post may arise. Where such a vacancy occurs, the employer shall apply the following options in the sequence shown to the filling of such posts:

- (a) offer a CID where an existing fixed-term teacher qualifies for such in accordance with the terms of this circular; or
- (b) submit the vacancy for filling by redeployment in accordance with agreed arrangements, or
- (c) consider an opportunity, the qualification requirements of the post permitting, for a teacher employed on a CID in a part-time capacity to undertake additional hours up to but not exceeding full-time hours (see * below)

These options having been exhausted, any permanent post(s) remaining unfilled shall be advertised by the employer and filled through a formal recruitment process using the standard procedures and criteria for the filling of such posts including the filling of a part-time post on a permanent basis.

* As far as possible, employers should give consideration to requests by workers to transfer from part-time to full-time work or to increase their working time should the opportunity arise. **In doing so, as with all teaching appointments, employers must have regard to the curricular needs of the school and the qualifications required for the post.**

5.1.5 Where the school has unassigned hours these may be offered to a part-time CID holder on a fixed term basis. A separate fixed term contract shall be offered in respect of these hours. **In doing so, as with all teaching appointments, employers must have regard to the curricular needs of the school and the qualifications required for the post.** In the event of these hours continuing for 4 years, they will be subject to assessment for a contract of indefinite duration in accordance with paragraph 4.2.

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Hubert Loftus
Principal Officer

June 2009